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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 Lancer Insurance Company, et al.,)

11 Plaintiffs,)

12 vs.)

No. CV-08-8084-PCT-PGR

13 Western Distributing Company, et al.,)

14 Defendants.)

ORDER

15 In a complaint filed on July 7, 2008, the plaintiffs allege that the Court has
16 diversity of citizenship jurisdiction over this action pursuant to 28 U.S.C.
17 § 1332.¹ Having reviewed the complaint, the Court finds that the jurisdictional
18 allegations therein are insufficient as a matter of law to establish the existence of
19 subject matter jurisdiction. The Court will therefore require the plaintiffs to file an
20 amended complaint properly stating a jurisdictional basis for this action. See 28
21 U.S.C. § 1653; see *a/so*, Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338,
22 339 (1926) ("The established rule is that a plaintiff, suing in federal court, must
23 show in his pleading, affirmatively and distinctly, the existence of whatever is
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25 The complaint alleges that jurisdiction also exists pursuant to 28 U.S.C.
26 § 1441 and 1446, but those statutes are totally inapplicable to this action since
they relate solely to actions removed from a state court, and this is not a removed
action.

1 essential to federal jurisdiction, and, if he does not do so, the court, on having the
2 defect called to its attention or on discovering the same, must dismiss the case,
3 unless the defect be corrected by amendment.")

4 The jurisdictional allegation concerning defendant Ronald Eugene Hale is
5 facially deficient because it merely refers to him as being a resident of Aurora,
6 Colorado. It is black letter law that allegations of residency, including allegations
7 of "primary residency," do not suffice for purposes of § 1332. See Steigleder v.
8 McQuesten, 198 U.S. 141, 143, 25 S.Ct. 616, 617 (1905) ("It has long been
9 settled that residence and citizenship [are] wholly different things within the
10 meaning of the Constitution and the laws defining and regulating the jurisdiction
11 of the ... courts of the United States; and that a mere averment of residence in a
12 particular state is not an averment of citizenship in that state for the purpose of
13 jurisdiction."); accord, Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9th
14 Cir. 2001) (Plaintiffs' complaint ... state[s] that Plaintiffs were 'residents' of
15 California. But the diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of
16 citizenship, not of residency. ... [The] failure to specify Plaintiffs' state of
17 citizenship was fatal to [the] assertion of diversity jurisdiction.")

18 The plaintiffs are advised that their failure to timely file an amended
19 complaint that cures the pleading deficiency noted in this Order shall result in the
20 dismissal of this action for lack of subject matter jurisdiction.² Therefore,

21 IT IS ORDERED that the complaint is dismissed for lack of subject matter
22 jurisdiction.

23 IT IS FURTHER ORDERED that the plaintiffs shall file an amended
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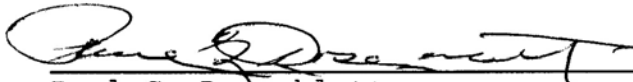
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26 The plaintiffs are also advised that the total capitalization of the parties' names in
the caption of the complaint violates LRCiv 7.1(a)(3).

1 complaint properly stating a jurisdictional basis for this action no later than **July**
2 **25, 2008.**

3 IT IS FURTHER ORDERED that the plaintiffs shall immediately serve a
4 copy of this Order upon any defendant who has already been served with
5 process.

6 DATED this 14th day of July, 2008.

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9 Paul G. Rosenblatt
United States District Judge